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DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

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Docket No. FMCSA-2000-7017 – 8

**SAFETY REQUIREMENTS FOR OPERATORS OF SMALL PASSENGER-
CARRYING COMMERCIAL MOTOR VEHICLES USED IN INTERSTATE
COMMERCE**

**COMMENTS OF GREYHOUND LINES, INC. IN RESPONSE TO NOTICE OF
PROPOSED RULEMAKING**

April 10, 2001

STATEMENT OF POSITION

Greyhound congratulates the Federal Motor Carrier Safety Administration (FMCSA) for taking an important step towards implementing needed safety regulation of commercial passenger vehicles carrying between 9 and 15 people. In essence, FMCSA proposes to impose federal safety regulations (except drug and alcohol testing and CDL requirements) on non-local commercial van operators that are primarily engaged in commercial passenger transportation. This is an important first step in ensuring that passengers in commercial vans have the same safety protections as those in larger commercial vehicles. We respectfully urge FMCSA to finalize and implement the proposed rules quickly.

Although Greyhound believes that the proposed rules squarely address the key safety issue, we also believe that they could be made more workable by more easily identifiable criteria for those vehicles and operations to be covered by federal safety regulations.

Rather than defining the regulated class as commercial van operators “directly compensated” for transportation services, we suggest that the standard be commercial van operations performed by entities primarily engaged in providing surface transportation. As discussed below, Greyhound is concerned that the “directly compensated” test could be easily circumvented.

BACKGROUND

Since 1995, Congress has acted 3 times to bring smaller commercial passenger carriers under an appropriate level of federal safety regulation. The Federal Highway Administration (FHWA), which had safety jurisdiction over commercial motor vehicles until December 31, 1999, did not respond in a timely manner to these congressional actions. However, since assuming federal safety jurisdiction on January 1, 2000, FMCSA has made appropriate safety regulation of smaller commercial passenger vehicles a priority and has moved more rapidly toward achieving that goal.

The ICC Termination Act of 1995 (ICCTA) broadened the definition of passenger-carrying commercial motor vehicles in 49 USC 31132(1) to include all vehicles carrying passengers for compensation except “vehicles providing taxicab service and having a capacity of not more than 6 passengers...”. For the next 4 years, FHWA took no action to apply appropriate safety regulation to the new class of commercial motor vehicles.

This lack of action led Congress to again address the issue in TEA-21. In section 4008 of TEA-21, Congress took the extraordinary step of mandating that the FMCSRs (except

CDLs and drug and alcohol testing) “shall apply” to passenger-carrying commercial motor vehicles with more than 8 passengers, including the driver, “on the last day of the 1-year period beginning on the date of enactment” of TEA-21, or June 8, 1999, “except to the extent that the Secretary determines, through a rulemaking proceeding, that it is appropriate to exempt such operators of commercial motor vehicles from the application of these regulations”.

On September 3, 1999, FHWA responded to the congressional directive with 2 actions. FHWA exempted all small passenger-carrying commercial vehicle operators from the FMCSRs for 6 months during which it intended to determine to what extent to apply the FMCSRs to commercial passenger vans. FHWA also proposed imposing vehicle marking and accident reporting requirements on operators of small commercial vans.

In light of the continuing lack of any meaningful safety regulation of commercial passenger vans, Congress provided even more proscriptive language in the Motor Carrier Safety Improvement Act of 1999 (MCSIA), which became law on December 9, 1999. Section 212 of MCSIA requires that the FMCSRs (except CDLs and drug and alcohol testing) be applied to commercial passenger vans known as “camionetas” and “those commercial vans operating in interstate commerce outside of commercial zones that have been determined to pose serious safety risks”. Section 212 further required that implementing regulations be in place by December 9, 2000.

FMCSA responded with 2 notices published in the Federal Register on January 11, 2001. One Notice contained a final rule incorporating the new statutory definition of commercial motor vehicle into the FMCSRs and requiring that operators of CMVs designed or used to transport between 9 and 15 passengers for compensation, complete a motor carrier identification report; meet certain vehicle marking requirements; and maintain an accident register.

The other notice is the subject of these comments. It proposes to apply the FMCSRs (except CDL and drug and alcohol testing requirements) to all CMVs designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce when the operators of the CMVs are directly compensated for such services and the transportation of any passenger covers more than 75 air miles.

FMCSA SHOULD EXPEDITIOUSLY FINALIZE THE PROPOSED RULES

Greyhound commends FMCSA for making appropriate safety regulation of smaller passenger-carrying CMVs a priority. The result is a proposed rule that is carefully thought out and rationally responds to the need for safety regulation of smaller passenger CMVs. Although the proposed rule was published after the congressional deadline for the final rule, the delay is understandable given that the rule was developed during FMCSA's first year in operation.

Having said that, Greyhound urges FMCSA to move forward vigorously to finalize the proposed rule in the next several months. Expedited action is needed for several reasons.

First, the NAFTA Arbitration Panel issued its final report on February 6, 2001. In that report, the Panel concluded that the United States had violated NAFTA by its blanket refusal to consider applications for trucking authority by Mexican-owned carriers and to permit investments by Mexicans in U.S. companies providing international cargo services. The Panel thus recommended that the U.S. start processing such applications on a case-by-case basis.

The United States is moving expeditiously to comply with the Panel decision. On March 7, the U.S. Special Trade Representative reiterated the commitment of the United States to implementing the panel decision and on March 14, announced that the U.S. and Mexico would be holding a meeting on implementation of the decision during the week of March 19. Given this rapid action, it appears likely that the border will be open for Mexican-owned and operated motor carriers within a matter of months.

Although the Panel decision dealt only with trucking applications, the situation with regard to passenger-carrying commercial motor vehicles is directly analogous. Conversations with knowledgeable DOT personnel confirm that the passenger carrier negotiations are likely to be conducted and concluded at the same time as the trucking negotiations.

This will mean that the Mexico-U.S. border will be open to an even greater flow of passenger-carrying vans known as “camionetas”. Camionetas are already a significant portion of the commercial van services in the U.S., operating to and from virtually every

major city in the U.S., but the spread of Mexican-owned camionetas has been somewhat limited by the fact that they could only get certificates to operate charter and tour services. In the next few months, that limitation is likely to be removed. As a result, the number of camionetas are likely to increase substantially.

Congress mandated that FMCSA apply the federal safety regulations to camionetas by December 9, 2000, 4 months ago. The impending border opening makes it even more urgent that FMCSA move as rapidly as possible to comply with the congressional mandate.

Second, there is already strong evidence in the record that the operations of existing, unregulated commercial van services pose serious safety risks that can only be minimized by the application of the FMCSRs. Greyhound has twice submitted for the record, fatal accident surveys indicating that the annual number of fatal accidents involving commercial passenger vans is far greater than the number of fatal accidents involving motorcoaches. Other parties have submitted similar evidence.

Although this data is not as precise as it would be had commercial passenger vans been subject to accident reporting requirements prior to the recent final rule, it clearly shows that there is a significant safety problem that needs to be addressed. FMCSA recognizes this is the case in the NPRM by its statement that “[w]hile the data has its limitations, it is alarming and suggests the need for action to improve the operational safety of this group

of motor carriers”. 66 Federal Register 2768. FMCSA should move rapidly to respond to this alarming data.

ONE MODIFICATION TO THE PROPOSED CRITERIA IS WARRANTED

Although Greyhound fully supports FMCSA’s proposed rule, we suggest one modification that will enhance enforcement of the rule.

Greyhound’s major concern is that by limiting applicability of the FMCSRs to smaller passenger-carrying commercial motor vehicles, the operators of which are “directly compensated” for their transportation services, FMCSA may be creating unnecessary confusion and an inappropriate loophole. We agree that only carriers that are “compensated” for transportation should be regulated, it is the modifier, “directly” that causes the potential problem.

FMCSA states that its intent in imposing this restriction is to avoid regulation of businesses that “do not hold themselves out to the public as providers of transportation services”. 66 Federal Register 2769. Thus, hotel/motel shuttles, rental car shuttles, whitewater river rafters, and others that are not primarily engaged in providing transportation services would not be covered by the regulations.

Greyhound agrees that entities that are providing transportation only as an ancillary part of their primary business should not be covered by the regulations, but the “directly compensated” limitation may not be the best way to accomplish that result.

On the one hand, what if the Smith Whitewater Rafting Company charged a separate \$5 fee for transporting passengers to the embarkation point. It would be directly compensated for the transportation service, even though it is not holding itself out as a transportation company.

On the other, what if the Jones Van Service charges its passengers a set fee for transportation as well as food and lodging along the way. Jones could argue that it is not subject to regulation since the transportation is “included in a total package charge or other assessment for highway transportation”. Thus, Jones is not “directly compensated” as defined in the proposed addition to section 390.5.

FMCSA could avoid both confusion and inappropriate loopholes with a standard that more clearly identifies the regulated entities. One possibility would be to apply the regulations only to those entities providing transportation for compensation in smaller vehicles that “hold themselves out to the public as providers of transportation services”. Thus, Jones Van Service is regulated; Smith Whitewater Rafting is not.

Another alternative, and the one that Greyhound prefers, is to apply the regulations to transportation for compensation in smaller vehicles provided by entities that are

“primarily engaged in providing surface transportation”. This would also cover Jones, while exempting Smith, but it would also reach those entities that are actually in business to provide compensated transportation, but try to avoid detection through lack of advertising or vehicle markings.

Either of these suggested alternatives would provide a clearer and more precise definition of the regulated class than the “directly” compensated test. We urge FMCSA to adopt one of them.

Greyhound does not object to FMCSA’s proposal to limit regulated entities to those that are providing service for at least one passenger travelling more than 75 air miles. We agree that Congress intended for FMCSA to focus initially on commercial van services that are comparable in length to those of intercity bus companies. FMCSA’s accident analysis demonstrates that the majority of the accidents occurred more than 100 miles from the driver’s residence (or 75 miles from the work reporting location, assuming 25 miles for the driver’s commute).

However, Congress certainly did not limit FMCSA regulation to van operations of more than 75 miles, and a substantial minority of van accidents occurred in the less than 75 mile range. As a better information profile of commercial van accidents is developed, Greyhound urges FMCSA to consider lowering the mileage threshold to cover more commercial van operations.

GREYHOUND FULLY AGREES WITH MOST OTHER ASPECTS OF THE PROPOSED RULE ON WHICH FMCSA SEEKS COMMENT

Greyhound responds as follows to FMCSA's requests for comments on various specific parts of the proposed rule.

Applicability of Specific FMCSR Provisions to Vans

FMCSA states, "The van operations that would be regulated have similar operational characteristics as intercity motorcoach businesses and should be required to meet similar standards of safety". 66 Federal Register 2772. Greyhound agrees. Indeed, in the categories specifically mentioned by FMCSA in the preamble – driver qualifications; hours of service; recordkeeping; vehicle inspection, maintenance, and repair – the safety standards should be exactly the same. It may be that some of the precise vehicle equipment standards may need to be refined for vans to take into account vehicle characteristics, but those modifications can be done over time. Given the urgent need for the rules to be implemented, any such refinements should not delay the implementation of the rules.

One rule that should receive high enforcement priority for commercial vans is section 392.9, Safe Loading. A major safety problem in commercial van transportation is that many vans chronically carry substantially more passengers than the vehicles are designed

to carry. Greyhound believes that this overcrowding contributes significantly to the high number of fatalities in van accidents.

A very recent example is provided by the March 13, 2001 news report that appears as Attachment 1 hereto. That article describes a Colorado van-truck accident in which 6 people were killed and 13 were injured, all of whom were in the van. The van, which reportedly was traveling from Phoenix to Chicago, carried 20 people. The carnage would have been much less had the van not been overloaded.

As this accident illustrates, FMCSA needs to ensure that commercial vans comply with the safe loading provisions of the FMCSR.

Implementation Schedule

FMCSA proposes that carriers be required to comply with the new safety requirements 90 days after the effective date of the final rule or 120 days after the final rule's publication date. 66 Federal Register 2772. Greyhound urges FMCSA to require compliance no more than 60 days after the publication date, rather than 120 days.

Assuming that it takes FMCSA 90 days to finalize and publish the rule (and Greyhound urges FMCSA not to take more than that), it will take another 7 months before enforcement agencies start to enforce the rule if there is a 120 day delay after publication. We are concerned that this will be well after the NAFTA border opening, and it will certainly mean that the rule will not be in place for the upcoming busy summer travel season.

It has now been more than a year and a half since the September 3, 1999 FHwA order exempted commercial vans from the FMCSR while it conducted a “six month” study of what rules should be applied. There has been more than ample notice to commercial van operators that at least some parts of the FMCSR would apply to their operations. Thus, FMCSA should move expeditiously to require their compliance with the final rules.

Transportation of Migrant Workers

Greyhound agrees with FMCSA that transporters of migrant workers should be subject to the same Part 395 hours of service requirements as all other covered commercial van operators. There is no reason whatsoever for allowing a less stringent hours of service requirement for transporters of migrant workers.

We also believe that transporters of migrant workers offer a good example of how the “directly compensated” standard could be used to evade regulation. A commercial van transporter could package its charges to include transportation, lodging, and food en-route from a Mexican village to a work location in Washington state. The transportation would be “included in a total package charge” and thus the transporter would not receive “direct compensation” as defined in proposed section 390.5. 66 Federal Register 2779. This evasion could not occur if the “holding out” or “primarily engaged” standard discussed above is utilized.

Safety Fitness Standards

FMCSA proposes commercial van operators “would be covered by the same fitness procedures and standards used to evaluate other interstate motor carriers”. Greyhound completely agrees with this proposal. FMCSA must have, and utilize, the authority to conduct compliance reviews and assign safety ratings to commercial van operators, and to prohibit unfit operators from providing service. Just as for motorcoach safety enforcement, these are essential enforcement tools.

State Requirements under MCSAP

Under the proposed rule, FMCSA would make the adoption and enforcement by states of compatible safety regulations applicable to commercial vans operating in interstate commerce, a condition of participation in the MCSAP program. This is the same condition that applies with regard to motorcoaches, and it is entirely appropriate. Just as for motorcoaches, the imposition of this condition is the only way that FMCSA can ensure that the states are enforcing appropriate safety standards.

However, FMCSA adopts a different approach with regard to the adoption and enforcement of compatible standards for commercial vans operating in intrastate commerce. Unlike motorcoaches, where FMCSA requires compatible intrastate standards as a condition of MCSAP participation, FMCSA proposes that there be no such requirement for compatible intrastate standards for commercial vans.

Greyhound believes that the intrastate requirement should be the same for motorcoaches and commercial vans. The stated justification for not applying the intrastate requirement to all states is that 32% of fatal van accidents occurred in 3 states (Florida, Texas, and California). But this still means that more than two-thirds of fatal van accidents occurred in other states. By comparison, we note that because of the tragic Mothers Day accident in New Orleans, the vast majority of year 2000 motorcoach fatalities occurred in Louisiana. Does that mean that only Louisiana should be required to have compatible intrastate standards? Of course not.

Like the regulatory framework for motorcoaches, there should be a system of compatible safety standards for commercial vans, both interstate and intrastate. This will be particularly necessary as the NAFTA border opening produces a likely surge of services throughout the United States.

CONCLUSION

Greyhound congratulates FMCSA for its comprehensive and thoughtful proposal for the regulation of commercial vans. We respectfully request that FMCSA carefully consider the modifications to the rule that we have proposed, particularly with regard to the definition of the vehicle operations covered by the new rule. Finally, we urge FMCSA to expeditiously adopt and implement a final rule. Safety regulation of commercial van service is urgently needed.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Theodore Knappen', with a stylized flourish at the end.

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Tuesday March 13 3:50 AM ET

6 Die in Colorado Traffic Accident

SEDGWICK, Colo. (AP) - Six men were killed and 13 people were injured after a semitrailer truck collided with a van on an icy highway.

The crash Monday appeared to be a rear-end accident, the Colorado State Patrol said. The vehicles slid off the road about 33 miles northeast of Sterling and the van rolled.

The van was carrying 20 people believed to be Mexican citizens from the Phoenix area to Chicago, authorities said. All of the dead and injured were riding in the van.

Four women and an 8-month-old baby were among those hurt.

Four of the van's passengers were in stable condition, and two others were in serious but stable condition, officials said early Tuesday. The conditions of the other injured passengers were not available.

The driver of the semi was treated and released.

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